

Chapter 2

EMPLOYMENT PROVISIONS

2-1 TERMS OF EMPLOYMENT

2-1.1 Career Appointment

An indefinite appointment expected to last the equivalent of 90 full-time workdays or more in a calendar year is career employment. A limited-term appointment expected to last the equivalent of 90 full-time workdays or more in a calendar year is considered as career employment for all benefit purposes except as otherwise provided in the rules or regulations.

2-1.2 Noncareer Appointment

- (a) **Defined.** An appointment expected to last less than the equivalent of 90 full-time workdays in a calendar year is a noncareer appointment.
- (b) **Student and special noncareer classifications authorized.** The state personnel director may issue regulations to permit noncareer employment exceeding the equivalent of 89 full-time workdays in a calendar year, without fringe benefits, for designated student and special classifications.

- (c) **Limitations on noncareer appointments.** An employee in a noncareer appointment is not entitled to any of the following:

- (1) Sick or annual leave accruals.
- (2) Holiday pay.
- (3) Enrollment in state-sponsored group insurance plans.
- (4) Service credit for any purpose, such as longevity compensation, salary step increase, employment preference, or status.
- (5) Employment exceeding the equivalent of 89 full-time workdays in any calendar year.

[Rule 2-1 last amended effective March 18, 2001]

2-2 [RESERVED]

2-3 PERFORMANCE RATINGS

2-3.1 Rating System

- (a) **Regulations.** The state personnel director shall issue regulations to establish a system of probationary ratings, annual ratings, interim ratings, and follow-up ratings for appointing authorities to evaluate and report employee performance and behavior.
- (b) **Ratings.**
- (1) **Types of performance ratings.** A rating issued under this rule is a single overall evaluation of the performance and behavior of the employee for the relevant rating period:
- (A) **Probationary rating.** A probationary rating rates the overall performance and behavior of the employee as either *satisfactory* or *unsatisfactory*.
- (B) **Annual rating.** An annual rating rates the overall performance and behavior of the employee as either *satisfactory* or *needs improvement*.
- (C) **Interim and follow-up ratings.** An interim rating rates the performance or behavior of the employee as *unsatisfactory*. A follow-up rating rates the overall performance of the employee as either *satisfactory* or *unsatisfactory*.
- (2) **Methods.** Unless provided otherwise in the regulations, an appointing authority may use any appropriate performance rating

method developed or approved by the department of civil service to evaluate and rate employees. If an approved rating method yields overall performance evaluation categories different than those in subsection (b)(1), the categories must equate to the overall performance categories required in subsection (b)(1).

- (3) **Component parts.** If an overall rating is *satisfactory*, a negative evaluation on an individual subpart of the performance evaluation, such as an individual objective, competency, or factor, is not grievable or reviewable in the departmental review procedure.
- (c) **Review with employee.** A supervisor must review each probationary, annual, interim, and follow-up rating with the employee. Both the supervisor and the employee must sign and date each rating as evidence of the review. The employee's signature on the rating does not indicate that the employee agrees with the rating. The employee may file an explanatory statement to accompany the rating.
- (d) **Use of ratings.** A performance rating may be considered in making human resource decisions, including, for example, promotion, retention, assignment, and training.
- (e) **Report.** If required by the civil service regulations, each appointing authority shall report or certify probationary, annual, interim, and follow-up ratings to the department of civil service.

2-3.2 Probationary Ratings

- (a) **Probationary ratings.** Unless a probationary appointment has been terminated or rescinded, an appointing authority shall evaluate the performance and behavior of each probationary employee and issue a probationary rating as required in the civil service rules and regulations.
- (1) **Full-time employment.** At a minimum, an appointing authority shall issue a probationary rating for a full-time probationary employee after completion of 6 calendar months and again after completion of one calendar year of employment. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall rate the employee after completion of 3 calendar months of employment.
- (2) **Less than full-time employment.** At a minimum, an appointing authority shall issue a probationary rating for a probationary employee working less than full-time after completion of 9 calendar months and again after completion of 18 calendar months of employment. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall rate the employee after completion of 3 calendar months of employment.
- (3) **Extension of probation.** If a probationary period is extended beyond one calendar year (for full-time employees) or 18 calendar months (for less than full-time employees), as authorized in rule 3-6.2(b) [Extension of Probationary Period], the appointing authority shall also issue a final probationary rating no later than 28 calendar days after the end of the extension of the probationary period.
- (b) **Satisfactory probationary rating.** A *satisfactory* probationary rating is not discipline and is not grievable.
- (c) **Unsatisfactory probationary rating.** The following apply to *unsatisfactory* probationary ratings:
- (1) **Discipline.** An *unsatisfactory* probationary rating is discipline and may be the basis for additional discipline, up to and including dismissal.
- (2) **Grievance.** An employee may grieve an *unsatisfactory* probationary rating only as authorized in rule 3-6.5 [Grievance of Probationary Rating or Discipline], rule 8-1 [Grievances], and the applicable regulations.
- (3) **Effects.**
- (A) An employee who receives an *unsatisfactory* probationary rating is not eligible for a step increase, a performance-pay award, or reclassification until a later *satisfactory* rating is issued.
- (B) The period beginning when the employee receives an *unsatisfactory* probationary rating is not counted as qualifying time for a step increase or reclassification. A step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.
- (4) **Record.** The employee's employment record must reflect any *unsatisfactory* probationary rating.

2-3.3 Annual Ratings

(a) **General.** The following apply to all annual ratings for employees in compensation plans with fixed steps and in performance-pay programs.

- (1) **Annual rating required.** An appointing authority shall evaluate the performance of each nonprobationary employee and issue an annual rating as required in the civil service rules and regulations.
- (2) **Number and timing.** An appointing authority shall issue an annual rating at least once annually. In addition, the appointing authority may issue additional annual ratings at any time. If the employee has received an interim rating or an *unsatisfactory* follow-up rating, the appointing authority is not obligated to issue an annual rating for any period covered by the interim or follow-up rating.
- (3) **Performance improvement plan.** If an employee receives a *needs improvement* annual rating, the appointing authority must establish a performance improvement plan to monitor the employee's performance. The performance improvement plan must establish a date by which the appointing authority will issue another annual rating to evaluate the employee's performance under the performance improvement plan.
- (4) **Departmental review procedure.** Each appointing authority shall establish a departmental review procedure for employees to obtain a review of a *needs improvement* annual rating. The procedure must provide for a review by the appointing authority or the

appointing authority's designee. If the annual rating is not grievable or appealable to the department of civil service, the review of the appointing authority is also not grievable or appealable.

(b) **Compensation plans with fixed steps.** The following apply to annual ratings for employees in compensation plans with fixed steps:

- (1) **Satisfactory annual rating.** A *satisfactory* annual rating is not discipline and is not grievable or reviewable.
- (2) **Needs improvement annual rating.** The following apply to *needs improvement* annual ratings:
 - (A) **Discipline.** A *needs improvement* annual rating is not discipline.
 - (B) **Complaints.** A *needs improvement* annual rating cannot be grieved unless the employee alleges that the annual rating was issued in violation of rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]. However, an employee may request a review of a *needs improvement* annual rating within the departmental review procedure authorized in subsection (a)(4).
 - (C) **Effects.**
 - (1) **Step.** An employee who receives a *needs improvement* annual rating is eligible for a step increase.
 - (2) **Reclassification.** An employee who receives a *needs improvement*

annual rating is not eligible for reclassification until a later *satisfactory* rating is issued. A reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

- (c) **Performance-pay program ratings and actions.** The following apply to annual ratings and performance-pay actions for employees in performance-pay programs in (1) the senior executive service, (2) the senior executive management assistant service, (3) equitable classification plan (ECP) Group 4, and (4) ECP Groups 1, 2, and 3 if the state personnel director has approved the employee's inclusion in a performance-pay program:

(1) **Salary review.** An appointing authority shall complete a salary review for each employee in a performance-pay program at the same time it completes the annual rating. The appointing authority shall use the annual rating as one factor in determining the employee's eligibility for an increase in base salary or a lump sum award authorized in rule 5-3.4 [Operation of Compensation Schedules].

(2) **Satisfactory annual rating.** A *satisfactory* annual rating is not discipline and is not grievable or reviewable.

(3) **Needs improvement annual rating.** The following apply to *needs improvement* annual ratings:

(A) **Discipline.** A *needs improvement* annual rating is not discipline.

(B) **Complaints.** A *needs improvement* annual rating cannot be grieved unless the

employee alleges that the annual rating was issued in violation of rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection]. However, an employee may request a review of a *needs improvement* annual rating within the departmental review procedure authorized in subsection (a)(4).

(C) **Effects.**

(1) **Performance-pay award.** An employee who receives a *needs improvement* annual rating is not eligible for a performance-pay award until a later *satisfactory* rating is issued. A performance-pay award cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(2) **Reclassification.** An employee who receives a *needs improvement* annual rating is not eligible for a reclassification until a later *satisfactory* rating is issued. A reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(4) **Grievances regarding other performance-pay actions.** Performance-pay awards are discretionary. An employee is not authorized to grieve or appeal a performance-pay action unless a grievance or an appeal is specifically permitted in this rule or the applicable regulations.

(A) **Grievance permitted.** An employee aggrieved by any of the following performance-pay actions may file a grievance as authorized in rule 8-1 [Grievances] and the applicable regulations:

- (1) The employee's pay is reduced.
- (2) The appointing authority does not rate the performance of the employee at least once annually.
- (3) The performance-pay action is alleged to violate rule 1-8 [Prohibited Discrimination] or rule 2-10 [Whistleblower Protection].

(B) **Grievance prohibited.** Except as expressly authorized in subsection (c)(4)(A), the employee cannot grieve a final performance-pay decision of the appointing authority. By way of example only, the following performance-pay actions cannot be grieved:

- (1) The amount of a performance-pay award.
- (2) The failure to receive a performance-pay award.
- (3) The distribution of a performance-pay award between a base salary adjustment and a lump sum award.
- (4) The performance evaluation or performance-pay award of another employee.
- (5) The decision to include a position in, or exclude a

position from, a performance-pay program.

- (6) The performance-pay program itself, including, for example, the performance standards, departmental evaluation methods, rating categories, and departmental salary-range subdivisions.

2-3.4 Interim and Follow-up Ratings

(a) **Interim ratings.** An appointing authority may evaluate the performance and behavior of an employee, including a probationary employee, and issue an interim service rating at any time. An interim rating is an *unsatisfactory* rating.

(b) **Follow-up ratings.**

- (1) **Follow-up rating period.** If the appointing authority issues an interim rating but does not dismiss the employee, the appointing authority shall establish in writing the length of a follow-up rating period. If, during the follow-up rating period, the employee is placed on a leave of absence without pay or extended sick leave, the follow-up rating period is automatically extended for an additional period equal to the period of the employee's absence.
- (2) **Follow-up rating.** The appointing authority shall evaluate the performance and behavior of the employee during the follow-up rating period and issue a follow-up rating as required in the civil service rules and regulations. The appointing authority shall issue the follow-up rating before or within 28 calendar days after the end of the follow-up

rating period. If the appointing authority fails to issue a follow-up rating within the time allowed, the employee may, within 14 calendar days after the end of the period allowed for issuance of the follow-up rating, request in writing that the appointing authority issue the follow-up rating. If the appointing authority fails to issue the follow-up rating within 14 calendar days after the employee's written request, the employee is returned to satisfactory standing, effective the end of the follow-up rating period. However, the return to satisfactory standing does not nullify any prior interim rating or *unsatisfactory* follow-up rating or preclude the later use of any such rating.

(c) **Discipline.** Interim ratings and *unsatisfactory* follow-up ratings are discipline and may be the basis for additional discipline, up to and including dismissal.

(d) **Grievance.**

(1) **Nonprobationary employee.** A nonprobationary employee who receives an interim rating or an *unsatisfactory* follow-up rating may grieve the rating as provided in rule 8-1 [Grievances] and the applicable regulations.

(2) **Probationary employee.** A probationary employee who receives an interim rating or an *unsatisfactory* follow-up rating may grieve the rating as provided in rule 3-6.5 [Grievance of Probationary Rating or Discipline].

(e) **Effects.**

(1) An employee who receives an interim rating or an *unsatisfactory* follow-up rating is not eligible for a step increase, a performance-pay

award, or reclassification until a later *satisfactory* rating is issued.

(2) The period during which the employee is rated as *unsatisfactory* is not counted as qualifying time for a step increase or reclassification. A step increase, performance-pay award, or reclassification action cannot be made retroactive to a date before a new *satisfactory* rating is issued.

(f) **Commission action.** If an employee receives an interim rating and a subsequent *unsatisfactory* follow-up rating and the appointing authority has taken no adverse action, the state personnel director may recommend to the civil service commission that the employee be separated from the classified service.

[Rule 2-3 last amended effective October 1, 2001]

2-4 LAYOFFS

2-4.1 Reasons for Layoff

An employee may be laid off for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in departmental mission, or reorganization of the work force.

2-4.2 Notification

An appointing authority shall give prior written notice to an employee who is laid off.

2-4.3 Procedure for Making Layoffs

An appointing authority shall lay off employees in accordance with the civil service rules and regulations governing employment preference.

[Rule 2-4 last amended effective March 18, 2001]

2-5 EMPLOYMENT PREFERENCE

2-5.1 Application and Protection

- (a) **Application.** Unless otherwise provided in an approved departmental layoff plan, an employee can apply employment preference only within the employee's current principal department or autonomous entity. However, an employee cannot apply preference against a position or classification that is protected from the application of employment preference.
- (b) **Limited-term appointments.** An employee is not eligible to exercise employment preference or to be placed on a recall list at the end of a limited-term appointment, unless the employee meets one of the following criteria:
- (1) An employee with status gained from an indefinite appointment who accepts or receives a job change to a limited-term appointment may exercise employment preference at the end of the limited-term appointment. Employment preference begins at the last classification level at which the employee achieved status in an indefinite appointment before accepting the limited-term appointment. Employment preference may be exercised only within the principal department or autonomous agency that appointed the employee to the limited-term appointment.
 - (2) A person who is recalled on a limited-term basis is not eligible to exercise employment preference at the end of the limited-term appointment but shall be returned to all recall lists for which the employee is eligible.
 - (c) **Protected positions.** An employee occupying a protected position cannot be displaced from the employee's current position by another employee exercising employment preference. An employee in a protected position does not lose the right to apply employment preference to an unprotected position if the employee's protected position is abolished. The following positions are protected positions:
 - (1) All positions in senior executive service (SES) classifications, including positions in SES-eligible classifications.
 - (2) All positions in ECP Group 4 classifications.
 - (3) All positions in senior executive management assistant service (SEMAS) classifications.
 - (4) Any other position designated as protected in any other civil service rule or regulation.
 - (d) **Departmental layoff plans.** The department of civil service may approve a departmental layoff plan that varies the application of employment preference within a department or autonomous agency. An approved departmental layoff plan may vary the application of employment preference in the following areas only:
 - (1) The application of county preference based on organizational or geographic limits.
 - (2) The application of employment preference between recognized autonomous entities of a principal department.
 - (3) The application of employment preference into additional positions in class clusters approved by the

appointing authority and the department of civil service.

- (4) The application of employment preference between eligible employee status codes.

2-5.2 Determination

Employment preference is determined by an employee's total continuous service.

- (a) **Ranking employees with identical service.** If two or more employees have equal total continuous service, the appointing authority shall rank each employee by evaluating factors such as fitness for the position, education, experience, behavior, and performance. An employee receiving a higher ranking is considered to have greater employment preference. An employee cannot appeal a ranking to the department of civil service or the civil service commission unless the ranking violates rule 1-8 [Prohibited Discrimination].
- (b) **Loss of employment preference.** An employee who separates from the state classified service by methods other than a leave of absence, suspension, or layoff, loses any total continuous service accumulated before that separation.
- (c) **Effect of status.** An employee with status from current employment, regardless of the classification at which status was attained, has greater employment preference than an employee without status.

2-5.3 Qualification

An employee may apply preference against a least senior position if all of the following eligibility criteria are met:

- (a) **Position and eligibility.** An employee may apply preference (1) to a least senior

position in a classification or class series in which the employee is serving or (2) to a least senior position in a classification or class series at or below the classification in which the employee previously attained status.

- (b) **Subclasses.** If subclass codes have been assigned to the least-senior position, the employee may apply preference only if the employee has been assigned one or more of the same subclass codes in the same classification or class series at or above the classification of the least senior position.
- (c) **Selective position requirements.** If selective position requirements have been established for the least senior position, the employee is eligible to apply preference only if the employee meets the selective position requirements.

2-5.4 Employee Rights to Apply Preference

An employee may apply preference only against another position within the employee's county of employment, unless otherwise permitted in an approved departmental layoff plan. An employee can apply preference to the least senior position for which eligible in the following order:

- (a) The least senior position in the employee's current classification.
- (b) The least senior position at a lower classification in the current class series or, alternatively, to the same or lower classification in a former class series in which the employee attained status, at the level that will minimize loss of pay.

2-5.5 Application of Employment Preference between Employees Covered by a Collective Bargaining Agreement and Employees not Covered by a Collective Bargaining Agreement

Application of employment preference between employees covered by a collective bargaining agreement and employees not covered by a collective bargaining agreement is subject to the following additional conditions:

- (a) **Qualification.** An employee may only displace a less senior employee in a position for which qualified in a classification in which the employee has previously attained status.
- (b) **Application; exhaustion.** An employee not covered by a collective bargaining agreement must first exhaust all bumping rights to other positions held by employees not covered by a collective bargaining agreement. After exhausting all such rights, the employee not covered by a collective bargaining agreement may then bump into the position covered by a collective bargaining agreement that minimizes loss of pay, subject to the terms and conditions of the collective bargaining agreement. If a collective bargaining agreement expressly provides for exclusively represented employees covered by the agreement to bump into positions not covered by an agreement, they may do so only after exhausting all bumping rights under the agreement, and then in accordance with this rule. When more than one employee covered by a collective bargaining agreement is eligible to bump into a position not covered by a collective bargaining agreement, the most senior employee receives bumping rights.
- (c) **Total continuous service.** Employment preference is determined by an employee's total continuous service.
- (d) **Limitation on seniority.** A collective bargaining agreement cannot prohibit an employee who accepts a supervisory position or any other employee who is not covered by a collective bargaining agreement from exercising employment preference into a position covered by the agreement. In such bumping situations, seniority earned outside the unit applies, except as limited by any collective bargaining agreement provisions in effect on January 23, 1983. This subsection only applies after the employee exhausts rights to displace other employees not covered by a collective bargaining agreement.
- (e) **Grievances.** A grievance based on the application and adverse effects of this rule is filed, processed, and resolved under the grievance procedure provisions that are applicable to the position into which the exercise of employment preference has occurred or is scheduled to occur. This rule does not preclude a nonexclusively represented employee from filing a standard grievance, even after bumping into an exclusively represented position, if the employee contends a denial of the right to displace another nonexclusively represented employee.

2-5.6 Effective Date

The employment preference rights of an employee laid off or displaced before the effective date of any amendment to the rules or regulations are determined by the civil service rules and regulations in effect at the time of layoff or displacement.

[Rule 2-5 last amended effective January 1, 2002]

2-6 DISCIPLINE

2-6.1 Discipline

- (a) **Authorized.** An appointing authority may discipline a classified employee for just cause.
- (b) **Just cause.** Just cause includes, but is not limited to, the following:
 - (1) Failure to carry out the duties and obligations imposed by the employer, a departmental work rule, or law, including the civil service rules and regulations.
 - (2) Conduct unbecoming a state employee.
 - (3) Unsatisfactory service or performance.
- (c) **Forms of discipline.** Permissible discipline includes, but is not limited to, the following:
 - (1) An *unsatisfactory* probationary rating, an interim rating, or an *unsatisfactory* follow-up rating.
 - (2) A written reprimand.
 - (3) Reduction in pay.
 - (4) Suspension without pay.
 - (5) Demotion.
 - (6) Dismissal from the classified service.
- (d) **Imposing discipline.** The appointing authority shall impose discipline in a manner consistent with the civil service rules and regulations and any applicable departmental work rules. When appropriate, an appointing authority shall use corrective measures and progressive discipline. However, if an infraction is sufficiently serious, an appointing

authority has the discretion to impose any penalty, up to and including dismissal, provided the penalty is not arbitrary and capricious.

- (e) **Notice of mandatory dismissal for first offense.** If an appointing authority establishes a mandatory dismissal penalty for a first offense, it must give prior written notice of the mandatory penalty to its employees.

2-6.2 Disciplinary Conference

- (a) **Disciplinary conference required.** If an appointing authority is contemplating imposing discipline, the appointing authority shall schedule a disciplinary conference. The appointing authority shall notify the employee in writing of the conference, charges, and possible penalties. If the employee fails to attend the disciplinary conference, the employee waives the right to a conference.
- (b) **Disciplinary conference not required.** An appointing authority is not required to hold a disciplinary conference in any of the following circumstances:
 - (1) The appointing authority suspends an employee for investigation, as provided in rule 2-6.4 [Suspension for Investigation].
 - (2) The appointing authority suspends an employee charged with a crime, as provided in rule 2-6.5 [Suspension for Criminal Charges].
 - (3) The employee is not on an approved leave of absence and has failed to report for work for 3 or more consecutive scheduled work days.

2-6.3 Representation

An employee who is scheduled for a disciplinary conference may be represented at the conference by a person authorized in rule 6-5 [Rights of Employees]. The charged employee is responsible for notifying the employee's representative of the conference. The conference will not be unreasonably delayed due to the representative's unavailability.

2-6.4 Suspension for Investigation

An appointing authority may suspend an employee with or without pay for up to 7 calendar days to conduct an investigation. On or before the end of the 7-day suspension, the appointing authority shall (1) reinstate the employee, (2) schedule a disciplinary conference, (3) discipline the employee, or (4) extend the investigative suspension with pay. If the appointing authority extends the investigative suspension, a disciplinary conference is not required, but the appointing authority shall give the employee written notice of the reasons for the extension.

2-6.5 Suspension for Criminal Charges

If an employee is charged with a criminal offense, the appointing authority may suspend an employee with or without pay. The appointing authority is not required to hold a presuspension disciplinary conference before imposing the suspension, but shall give the employee written notice of the suspension. However, at the request of the employee, the appointing authority shall meet with the employee to review the suspension. The suspension may remain in effect while the criminal charges are pending or the appointing authority may schedule a disciplinary conference and impose discipline before the criminal charges are resolved.

[Rule 2-6 last amended effective October 1, 2001]

2-7 DRUG AND ALCOHOL TESTING

2-7.1 Prohibited Activities

A classified employee shall not do any of the following:

- (a) Consume alcohol or use drugs while on duty.
- (b) Report to duty or be on duty with a prohibited level of alcohol or drugs present in the employee's bodily fluids.
- (c) Refuse to submit to a required drug test or alcohol test.
- (d) Interfere with any testing procedure or tamper with any test sample.

2-7.2 Testing Classified Employees

An appointing authority shall require an employee, as a condition of continued employment, to submit to a drug test or an alcohol test, as provided in this rule.

- (a) **Tests authorized.** The following tests are authorized:
 - (1) **Reasonable suspicion testing.** An employee shall submit to a drug test or an alcohol test if there is reasonable suspicion that the employee has violated this rule.
 - (2) **Preappointment testing.** An employee not occupying a test-designated position shall submit to a drug test if the employee is selected for a test-designated position.
 - (3) **Follow-up testing.** An employee shall submit to an unscheduled follow-up drug test or alcohol test if, within the previous 24 months, the

employee has done any of the following:

- (A) Voluntarily disclosed drug or alcohol problems.
 - (B) Entered into or completed a rehabilitation program for drug or alcohol abuse.
 - (C) Failed or refused a preappointment drug test.
 - (D) Been disciplined for violating this rule.
- (4) **Random selection testing.** A test-designated employee shall submit to a drug test and an alcohol test if the employee is selected for testing on a random selection basis.
- (5) **Post-accident testing.** A test-designated employee shall submit to a drug test or an alcohol test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.
- (b) **Limitations on certain tests.** An employee subject to testing under this rule may be required to submit only to a drug test, only to an alcohol test, or to both tests, subject to the following limitations.
- (1) **Preappointment testing.** Preappointment testing is limited to drug testing.
 - (2) **Follow-up testing.** The appointing authority may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug tests or alcohol tests within any 12-month period.
 - (3) **Random selection testing.** The number of drug tests conducted in any one year on a random selection basis cannot exceed 15 percent of

the number of all test-designated positions. The number of alcohol tests conducted in any one year on a random selection basis cannot exceed 15 percent of the number of all test-designated positions.

2-7.3 Testing New Hires; Conditional Offer of Employment

Any offer of employment to a person who is not currently employed in the classified service is a conditional offer of employment. The offer of employment is conditioned upon the person submitting to and passing a preemployment drug test. A person given a conditional offer of employment is prohibited from performing any duties until the person has submitted to and passed the preemployment drug test.

2-7.4 Penalties

(a) Classified employees.

- (1) **All employees.** An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its departmental work rules the range of penalties, including any mandatory penalties, for violating this rule.
- (2) **Employee selected for test-designated position.** An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a preappointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following occurs:

- (A) The employee cannot be appointed, promoted, assigned, recalled, or otherwise placed in the test-designated position.
 - (B) The employee is removed from all applicant pools for test-designated positions and is disqualified from any test-designated position for a period of 3 years.
 - (C) If the employee interferes with a test procedure or tampers with a test sample, the employee may also be disciplined as provided in subsection (a)(1).
- (b) **New hires.** If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test sample, the conditional offer of employment must be rescinded and the person must not be appointed to the position in the classified service. The person also is removed from all applicant pools and is disqualified from appointment to the classified service for a period of 3 years.
- (2) For preappointment testing, follow-up testing, and random selection testing, before the employee is selected to submit to a drug or alcohol test.
 - (3) For post-accident testing, before the occurrence of any accident that results in post-accident testing.
- (b) **Employer action.** After receiving notice, the appointing authority shall permit the employee an immediate leave of absence to obtain medical treatment or to participate in a rehabilitation program. In addition, the appointing authority shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug test or alcohol test. The appointing authority may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.
- (c) **Limitation.** An employee may take advantage of subsection (a) no more often than two times while employed in the classified service. An employee making a report is not excused from any subsequent drug test or alcohol test or from otherwise complying in full with this rule. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug test or alcohol test, including a follow-up test.

2-7.5 Self-reporting

- (a) **Reporting.** An employee who voluntarily discloses to the appointing authority a problem with controlled substances or alcohol cannot be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:
- (1) For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this rule.

2-7.6 Identification of Test-designated Positions

Each appointing authority shall first nominate classes of positions, subclasses of positions, or individual positions to be test-designated. The state employer shall review the nominations and shall recommend to the state personnel director the positions to be test-designated

positions. The director shall review the recommendations and shall designate as test-designated positions all the classifications, subclasses, or individual positions that meet the definition of a test-designated position. The designation is not limited by or to the nominations or recommendations. The appointing authority shall give written notice of designation to each test-designated employee at least 14 days before implementing the testing provisions of this rule.

2-7.7 Continuation of Existing Programs

Until the state personnel director issues regulations to the contrary, nothing in this rule prohibits an appointing authority from continuing to use an existing drug or alcohol testing program. Nothing in this rule or the regulations prohibits an appointing authority from implementing a drug or alcohol testing program required by federal law or approved by the commission in a collective bargaining agreement.

2-7.8 Coordination of Rule and Federal Regulations

This rule also applies to an employee subject to mandatory federal regulations governing drug or alcohol testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which (1) it is not possible to comply with both this rule and the federal regulation or (2) compliance with this rule is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

2-7.9 Regulations

The state personnel director shall establish the prohibited levels of drugs and alcohol in the regulations.

[Rule 2-7 last amended effective March 18, 2001]

2-8 CONFLICT OF INTEREST

2-8.1 Prohibitions

A classified employee shall not do any of the following:

- (a) Divulge or release, for the purpose of fostering personal financial gain or financial gain for a member of the employee's immediate family, any confidential information which is not by law, rule, regulation, or court order available to members of the general public. However, this provision does not prevent an employee from divulging or releasing confidential information regarding violations of rules, regulations, or applicable law except where otherwise prohibited by statute, court order, or professional ethics.
- (b) Engage in any business transaction or private arrangement for personal financial gain or financial gain for a member of the employee's immediate family that accrues from or is based on the employee's official position or on confidential information gained by reason of the employee's position.
- (c) Solicit, accept, or agree to accept anything of value under any circumstances that could reasonably be expected to influence the manner in which the employee performs work or makes decisions.
- (d) Grant or make available to any person any consideration, treatment, advantage, or favor beyond that which is generally granted or made available to others under similar circumstances.
- (e) Represent or act as agent for any private interests, whether for compensation or otherwise, in any transaction in which the

state has a direct and substantial interest and which could reasonably be expected to result in a conflict between the employee's private interests and official state responsibilities.

- (f) Have any substantial interest in, nor can a member of the employee's immediate family have such interest in, any business or industry concerning which the employee directly, in a significant decision-making capacity, participates on behalf of the state in the regulation, enforcement, auditing, licensing, or purchasing of any goods or services.

2-8.2 Departmental Work Rules

An appointing authority may issue departmental work rules that define with particularity acts prohibited by this rule. Any such departmental work rule is effective after approval by the state personnel director.

[Rule 2-8 last amended effective March 18, 2001]

2-9 DISCLOSURE OF INTEREST AND CONTACTS

2-9.1 Disclosure of Interest

- (a) **Affected employees.** The following employees shall disclose to their appointing authority (1) all personal or financial interests and (2) the personal and financial interests of members of their immediate families, in any business or entity with which they have direct contact while performing official duties as a classified employee:

- (1) An employee who has authority to purchase or award contracts.

- (2) An employee whose official duties include (1) developing or approving specifications for contracts or (2) recommending the purchase or award of contracts.

- (3) An employee who has substantial regulatory or enforcement responsibilities.

- (4) An employee who inspects or approves work performed by businesses or persons who are not state employees.

- (5) An employee who audits financial records of businesses or individuals.

- (6) An employee who supervises any employee listed in subsections (a)(1) through (a)(5).

- (b) **Notice.** Each employee determined by the appointing authority to be subject to this rule must be given written notice of that determination. Disclosure is not required under this rule in the absence of such notice. The appointing authority shall maintain a list of employees who have been given notice and shall make that list available to the state personnel director and the public.

2-9.2 Disclosure of Contacts

An employee who is given notice as provided in this rule shall report in writing to the employee's appointing authority each contact between the employee and any person doing business with the state in which the employee receives anything of value.

- (a) **Supervisors included.** An employee who supervises another classified employee governed by this rule shall report any contact between the supervisor and any individual in which the supervisor receives anything of value in the same manner as if the supervisor was

the classified employee required to report by this rule.

- (b) ***De minimis* contacts; exception.** An appointing authority may exempt from the reporting requirements of this rule any contact resulting in the receipt of anything of value which is so *de minimis* that the appointing authority has determined that its receipt by the classified employee could not reasonably be expected to influence the manner in which the employee performs work or makes decisions. However, any such *de minimis* exemption may not exceed the following limits:
- (1) Receipt of any single tangible or intangible item with a fair market value exceeding \$10.00.
 - (2) Receipt of any combination of tangible and intangible items during any 3-month period with an aggregate fair market value exceeding \$40.00. All items received from persons employed by, or directly or indirectly representing, the same business, entity, or person are aggregated and, if the aggregate value exceeds \$40.00, all contacts must be reported.
 - (3) Receipt of any amount of money, including a loan of money.
- (c) **Time limit for disclosure.** An employee shall file with the appointing authority any written report required by this rule within 14 calendar days after the reportable contact. An appointing authority may establish different time limits in its departmental procedures.

2-9.3 Departmental Procedures; Approval

Each appointing authority shall issue departmental procedures to implement

disclosure and reporting requirements and shall inform all employees and prospective employees of those procedures and the regulations governing conflict of interest. An appointing authority shall submit the departmental procedure to the state personnel director. Upon review to determine that the procedures are reasonable and consistent with the requirements of this rule, the state personnel director shall issue formal approval. A departmental procedure is not effective until the state personnel director has approved the departmental procedure. A disclosure report filed with an appointing authority is a public record.

[Rule 2-9 last amended effective March 18, 2001]

2-10 WHISTLEBLOWER PROTECTION

2-10.1 Reprisal Prohibited

An appointing authority shall not engage in reprisal against an employee for disclosing a violation or suspected violation of any of the following:

- (a) A state or federal law.
- (b) A lawful regulation or rule promulgated by a political subdivision of the state of Michigan.
- (c) A civil service rule or regulation.

2-10.2 Application

An employee who reports, or who is known by the appointing authority to have indicated an intent to report, violations or suspected violations is protected by this rule, unless the employee knew the report was false. This protection extends to an employee who participates in, or who was known by the appointing authority to have indicated an intent to participate in, a court proceeding or

an investigation, hearing, or inquiry conducted by a public body.

2-10.3 Forms of Reprisal

Reprisal includes actions such as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.

[Rule 2-10 last amended effective March 18, 2001]

2-11 LEAVE OF ABSENCE WITH PAY

2-11.1 Authorization

An appointing authority may authorize salary payments to an employee to attend school, visit other governmental agencies, or undertake any other systematic improvement of the knowledge or skills required in the employee's work. Salary payments may be in whole or in part.

2-11.2 Administrative Leave

An appointing authority may grant administrative leave with pay for necessary absence from duty for which annual, sick, or other leave with pay is not applicable. Additionally, the appointing authority must grant administrative leave when specifically required by the civil service commission.

[Rule 2-11 last amended effective March 18, 2001]

2-12 LEAVE OF ABSENCE WITHOUT PAY

2-12.1 Authorization

An appointing authority may grant an employee a leave of absence without pay and

without loss of employment status. Additionally, the appointing authority must grant a leave of absence without pay when specifically required by the commission.

2-12.2 Restoration to Position

When an authorized leave of absence expires, the employee must be restored to the position formerly occupied or an equivalent position. The appointing authority may approve restoration before the expiration of the leave.

2-12.3 Abolishment of Position

If the position of an employee is abolished during a leave of absence without pay, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].

2-12.4 Annual Leave Balance

- (a) **Retention during leave.** An employee may choose to retain an annual leave balance during a leave of absence in accordance with the official compensation plan.
- (b) **Limitation and exception.** Payment for annual leave due an employee who does not return from a leave of absence is at the employee's last rate of pay

2-12.5 Medical Leave of Absence

An appointing authority may grant a medical leave of absence without pay for up to 6 months to an eligible employee whose sick leave is exhausted. An employee is eligible for a medical leave of absence only if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. If an employee on medical leave requests an extension before the leave expires, an appointing authority is authorized to extend the leave to a maximum of one year.

Any extension of a medical leave beyond one year requires the written approval of the state personnel director.

[Rule 2-12 last amended effective March 18, 2001]

2-13 WAIVED RIGHTS LEAVE OF ABSENCE

- (a) **Approval and extension.** An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. Any extension beyond one year requires the written approval of the state personnel director.
- (b) **Ineligible employees.** An employee in a limited-term appointment who has not achieved status in an indefinite appointment is not eligible for a waived rights leave of absence, unless authorized in writing by the state personnel director.
- (c) **Operation.** An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave has no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service before the expiration of the waived rights leave through normal selection processes, the employee is not considered to have had a break in service.
- (d) **Separation.** If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.

[Rule 2-13 last amended effective March 18, 2001]

2-14 VETERANS' PREFERENCE AND MILITARY LEAVE

2-14.1 Definition: Veterans; Disabled Veterans

A *veteran* is a person with 90 or more calendar days of active service in the armed forces of the United States during any period covered by a selective service law and who has received an honorable discharge or other suitable evidence of honorable active service. A person, other than a disabled veteran, who has retired from any branch of the armed forces is ineligible for veterans' preference. A *disabled veteran* is one who the Veterans Administration or a branch of the military service has determined to be eligible for disability compensation.

2-14.2 Preference Credit Points

Preference credit will be applied as follows:

- (a) Within 5 years after a veteran's release from active duty, 5 preference credit points are added, upon request, to the final passing score in any eligible examination taken by the veteran.
- (b) Without regard to time limitations, 5 preference credit points are added, upon request, to the final passing score in any eligible examination taken by surviving spouses of veterans.
- (c) Without regard to time limitations, 10 preference credit points are added, upon request, to the final passing score in any eligible examination taken by disabled veterans, spouses of disabled veterans having greater than 50 percent disability, surviving spouses of veterans having children under 18 years of age, or surviving spouses of veterans with

continued parental care of a disabled child.

the cost of continuing group medical, dental, and vision insurance.

2-14.3 Regular Military Leave of Absence

- (a) **General provisions; without pay.** A classified employee in an indefinite appointment who enters military service in the armed forces of the United States under the provisions of the selective service law, by call to duty, or by voluntary entrance in lieu of being called to duty, is entitled to a military leave of absence for the period of time required to fulfill the military obligation. The regular military leave of absence is without pay or benefits, except as provided in subsection (b). If the employee voluntarily remains in military service beyond the time required by selective service law, the leave and right to restoration to the position formerly occupied or an equivalent position automatically terminates. Continuous state service credit is allowed for the period of the military leave of absence.
- (b) **Special provisions between September 11, 2001, and December 31, 2002.** If an employee is granted an emergency military leave of absence after September 11, 2001, and thereafter is placed on a regular military leave of absence, the employee is entitled to the regular military leave of absence with pay for any active duty period between September 11, 2001, and December 31, 2002. The leave is with pay if the military pay is less than the employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. During any period of military leave with pay, the employer shall also continue to pay the employer's portion of

2-14.4 Return from Regular Military Leave of Absence

To return to the classified service, the veteran must apply in writing to the appointing authority within 6 months after release from active duty in the armed forces or discharge from veterans' hospital. The appointing authority shall restore the veteran to the position formerly occupied or an equivalent position within 30 calendar days of the filing of such application.

2-14.5 Temporary Military Leave of Absence

An appointing authority shall grant a temporary military leave of absence to a classified employee occupying an indefinite position who is in a reserve component of the United States armed forces when ordered to active or inactive duty training. A temporary military leave of absence for active duty training is with pay if the military pay is less than the employee's regular state salary. The pay is equivalent to the difference between the employee's military pay and the regular state salary for each day of absence from scheduled state employment for those same days. The leave cannot exceed 15 regularly scheduled workdays in any fiscal year. Continuous state service credit is allowed for the period of temporary military leave of absence.

- (a) If active duty training exceeds 15 regularly scheduled work days in a fiscal year, the employee may choose to be placed on regular military leave of absence without pay or use annual or compensatory time accruals for the remainder of the period of training. The leave and the right to restoration to the position formerly occupied or an equivalent position terminates if the employee

fails to return to the classified position within 15 calendar days after release from training duty or after discharge from hospitalization incident to that training. Continuous state service credit is allowed for the period of the military leave of absence without pay.

- (b) **Holidays occurring during temporary military leave.** An employee in full pay status is entitled to holiday pay for a designated holiday that occurs or is observed during the period of a temporary military leave of absence. Military pay earned on a holiday is not considered in determining the amount of state salary for the holiday.

2-14.6 Emergency Military Leave of Absence

An appointing authority shall grant an emergency military leave of absence to a classified employee in an indefinite appointment who is a member of a reserve component of the armed forces and is ordered to perform emergency duty, by compulsory call of the governor or the president. The leave is with pay if the military pay is less than the employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. Pay is limited to 30 calendar days. Holiday pay is handled as prescribed in rule 2-14.5(b). If the emergency duty exceeds 30 calendar days, the employee may choose to be placed on regular military leave of absence without pay or use annual leave or compensatory time accruals for the remainder of the duty period. After release from emergency duty, the employee is restored immediately to the position formerly occupied. Continuous state service credit is allowed for the period of emergency military leave of absence.

2-14.7 Educational Leave

An appointing authority may grant a leave of absence without pay to a veteran who has completed the equivalent of 6 months in the classified service to take advantage of the educational grants made available by federal funds for veterans' education.

2-14.8 Abolishment of Positions

If the former position has been abolished, the veteran is entitled to another position in accordance with the civil service rules and regulations governing employment preference.

2-14.9 Reclassification

If the former position has been reclassified either higher or lower, the veteran has the same rights with respect to the reclassified position as would have applied had there been no interruption of state service.

2-14.10 Combining of Positions

If the former position has been combined with another position, the veteran's right to the combined position with respect to its present incumbent is determined in accordance with the civil service rules and regulations governing employment preference.

2-14.11 Examination upon Return

A veteran returning from military leave has the right to take any examination given during that leave for which the veteran would have been eligible had there been no interruption of state service. The request for examination must be made within 6 months after return to state service.

2-14.12 State Service

For employment preference purposes, a regular military leave of absence is considered

as state service in the same position and department where the veteran was employed when inducted in the armed forces.

2-14.13 Salary Step Increase

If the last service rating of a veteran returning from military leave was satisfactory, the veteran is placed at the salary step that would have applied had there been no interruption of state service.

2-14.14 Military Leave for Limited-term Employees

An appointing authority shall grant a military leave of absence to a classified employee in a limited-term appointment who is a member of a reserve component of the armed forces and is ordered to perform emergency duty, by compulsory call of the governor or the president, as provided below:

- (a) Employee with continuing status; emergency and regular military leave.** An employee in a limited-term appointment who has continuing status gained from an indefinite appointment is entitled to an emergency and regular military leave of absence in the same manner as provided in these rules for an employee in an indefinite appointment.
- (b) Employee without continuing status; limited-term military leave.** An employee in a limited-term appointment who does not have continuing status gained from an indefinite appointment and has at least 6 months continuous service in the limited-term appointment is entitled to a limited-term military leave of absence, as provided below:

 - (1) Without pay.** The limited-term military leave of absence is without pay or benefits, except as provided in subsection (c).

(2) Expiration and extension. The limited-term military leave of absence cannot continue beyond the date the limited-term appointment would have expired. However, an appointing authority may extend the limited-term appointment during the limited-term military leave of absence and, in such case, the limited-term military leave of absence continues until the end of the approved extension.

(3) Use of other accruals. An employee granted a limited-term military leave of absence may choose to use annual leave or compensatory time accruals before beginning the limited-term military leave of absence.

(4) Reemployment. To return to the classified service, the veteran must apply in writing to the appointing authority within 28 calendar days after release from active duty in the armed forces or discharge from a veterans' hospital. After applying for reemployment, the employee is restored immediately to the limited-term position formerly occupied, unless the appointment has expired or the position has been abolished.

(5) Service credit. Continuous state service credit is allowed for the period of the limited-term military leave of absence.

(c) Special provisions between September 11, 2001, and December 31, 2002. If an employee is granted a limited-term military leave of absence after September 11, 2001, the employee is entitled to the limited-term military leave of absence with pay for any active duty period between September 11, 2001, and December 31, 2002. The leave is with pay if the military pay is less than the

employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. During any period of military leave with pay, the employer shall also continue to pay the employer's portion of the cost of continuing group medical, dental, and vision insurance. Salary and benefit continuation payments authorized in this subsection expire on the earlier of (1) the date the limited-term military leave of absence expires or (2) December 31, 2002.

[Rule 2-14 last amended February 11, 2001,
retroactive to September 11, 2001]

2-15 SUPPLEMENTAL EMPLOYMENT OUTSIDE THE CLASSIFIED SERVICE

Supplemental employment outside the classified service is permitted if all of the following conditions are met:

- (a) The supplemental outside employment must not conflict with the employee's hours of state employment and must not conflict in quantity or interest with the satisfactory and impartial performance of state duties.
- (b) The employee must secure the written approval of the appointing authority before engaging in supplemental outside employment.
- (c) The employee must inform the appointing authority of contemplated changes in supplemental outside employment.

[Rule 2-15 last amended effective March 18, 2001]

2-16 ASSUMPTION INTO CLASSIFIED SERVICE

2-16.1 Assumption Authorized

If the legislature, the governor, a court, or the state personnel director determines that an existing position outside the classified service is or will become a position in the state service, the director shall assume the position into the classified service. The assumption must be completed in accordance with civil service rules and regulations. The assumption must also be completed in accordance with any applicable law, executive order, or court order, to the extent the law or order is not inconsistent with the civil service commission's constitutional authority or the civil service rules and regulations.

2-16.2 Classification of Assumed Positions

The state personnel director shall evaluate the position to be assumed and shall establish and classify the position within the classified service in the same manner as a newly established position. Only the appointing authority may appeal the classification of an assumed position.

2-16.3 Appointment

The appointing authority shall make an appointment to an assumed position in the same manner as an appointment to a newly established position. However, the state personnel director may authorize the appointment of the employee occupying the same position outside the classified service in accordance with the following standards:

- (a) **Merit selection and 3 years of service.**
The director may authorize an appointment without further testing of an employee with at least 3 years

satisfactory service at assumption if the employee's original selection was substantially based on merit. The employee must satisfactorily complete a probationary period as a classified employee and receive a final *satisfactory* probationary rating as provided in rule 2-3 [Performance Ratings]. If the employee does not satisfactorily complete the initial probationary period, the appointing authority shall separate the employee from the classified service.

- (b) **No merit selection or less than 3 years of service.** The director may authorize a temporary appointment for a period not to exceed 6 months for an employee with less than 3 years service at assumption or whose original selection was not substantially based on merit. During the 6 months, the department shall examine the employee on a noncompetitive basis. The employee must also satisfactorily complete a probationary period as a classified employee and receive a final *satisfactory* probationary rating as provided in rule 2-3 [Performance Ratings]. If the employee does not satisfactorily complete the examination or initial probationary period, the appointing authority shall separate the employee from the classified service.

2-16.4 Treatment of Employees

An employee who is appointed to a position assumed into the classified service is considered as a new hire without status as of the assumption, except as authorized by rule, regulation, or the state personnel director. Unless prohibited by these rules, the director may approve in writing the transfer to the classified service of some or all of a benefit, credit, status, seniority, or contract right accrued by an employee under a previous employer.

2-16.5 Pay and Benefits

The state personnel director shall establish the pay and benefits for an employee appointed to a position after consultation with the state employer and the appointing authority in accordance with the following standards:

- (a) **Pay.** The initial rate of pay for an employee whose position is assumed is established at the state pay level closest to, but not less than, the employee's rate of pay before assumption. The state personnel director may, at the request of the state employer or the appointing authority, approve continuation of a rate of pay that exceeds the maximum for the classification if the employee's pay is red-circled.
- (b) **Transfer of annual leave and sick leave balances.** If the employee has not been compensated for annual and sick leave balances outstanding on the date of assumption, the state personnel director may approve the transfer of all or a portion of the balances to the classified service. The number of hours transferred cannot exceed the maximum number permitted in the compensation plan. The state of Michigan is not liable for the value of any excess balance that is not transferred.
- (c) **Retirement.** The employee is eligible for retirement credit only as provided by law.

2-16.6 Prior Employment Contracts

Unless expressly agreed to in a writing signed by the state employer and the state personnel director, an employment contract between an employee assumed into the classified service and the previous employer, including a collective bargaining agreement, cannot be assumed by the state of Michigan and is void.

2-16.7 Relation to Collective Bargaining

All determinations and actions by the state personnel director or civil service commission under this rule, including, but not limited to, an assumption of a position, classification of an assumed position, initial appointment to an assumed position, initial treatment of an assumed employee, and initial pay and benefits of an assumed employee are prohibited subjects of bargaining and are not subject to the provisions of a collective bargaining agreement. However, if the director approves the transfer of seniority earned outside the classified service, the application of those seniority rights for purposes of reassignment, transfer, layoff, or recall within a unit is a mandatory subject of bargaining.

2-16.8 Special or Unique Circumstances

If special or unique circumstances require treatment of an employee assumed into the classified service that is prohibited by these rules, the state personnel director, with the consent of the civil service commission, is authorized to approve in writing such special or unique treatment as may be required for the good of the classified service.

[Rule 2-16 last amended effective January 1, 2002]

2-17 RETIREMENT

2-17.1 Cooperation with Board

The state personnel director shall cooperate with the state employees retirement board in maintaining a comprehensive retirement system for classified employees.

2-17.2 Return to Work from Retirement

Regardless of any other provision of these rules, a state classified employee retired or retiring under any state of Michigan retirement system who applies for and obtains employment in a classified position is considered, in all respects, as a new employee, subject to the following conditions:

- (a) **Exception, reinstatement.** A retired employee may be reinstated, but cannot receive any other employment benefits based upon previous classified service.
- (b) **Exception, disability retirement.** A classified employee who retires under a duty or nonduty disability provision of any state of Michigan retirement system and returns directly to a classified position after the disability ends is considered a continuing employee, but cannot receive state service credit for any purpose for the period of the disability retirement.
- (c) **Exception, deferred retirement.** A classified employee who has taken a deferred retirement and is reinstated or rehired before receiving a retirement benefit payment must requalify to receive prior service credit for longevity and annual leave.

[Rule 2-17 last amended effective March 18, 2001]

2-18 TRAINING

2-18.1 Responsibility

Agency management is primarily responsible for agency in-service training. However, the commission may direct the establishment of any training program it considers necessary.

2-18.2 Training Needs

The state personnel director shall assist agencies in determining their needs and devising and establishing programs to meet those needs.

2-18.3 Continuing Education

The state personnel director shall provide agencies with continuing education information and shall work with agencies and continuing education providers to establish programs that meet the occupational needs of state employees.

2-18.4 Advisory Services

The state personnel director shall provide agency trainers with materials and manuals and offer advisory help requested by the agency.

2-18.5 Interagency Training

The state personnel director shall initiate and encourage needed interagency training programs and shall assist individual state agencies, professional and employee organizations, and state educational institutions in providing interagency training.

[Rule 2-18 last amended effective March 18, 2001]

2-19 LEGAL REPRESENTATION

If an employee is named in any civil claim or action alleging negligence or other actionable conduct arising out of employment in the classified service, the employee may request that the appointing authority provide the services of an attorney at state expense to represent the employee. If the appointing authority determines either (1) that the conduct alleged occurred during the course of the employee's

employment and within the scope of the authority delegated to the employee or (2) that the employee's conduct occurred during the course of the employee's employment and the employee had a reasonable belief that the employee's conduct was within the scope of authority delegated to the employee, the employee is entitled to legal representation at state expense, subject to the following conditions:

- (a) If the appointing authority authorizes legal representation at state expense, the appointing authority shall first request that the attorney general represent the employee. If the attorney general declines to represent the employee, the appointing authority may, at its option, either hire an attorney to represent the employee or authorize the employee to hire an attorney. If the employee hires an attorney, the appointing authority shall reimburse the employee for all necessary and reasonable attorney fees and costs incurred.
- (b) The appointing authority is not required to provide legal services at state expense in connection with prosecution of a criminal suit against an employee.
- (c) Nothing in this rule requires an appointing authority to reimburse an employee or insurer for legal services to which the employee is entitled under a policy of insurance.

[Rule 2-19 last amended effective January 1, 2002]

2-20 WORKPLACE SAFETY

2-20.1 Acts of Violence and Threats of Violence

- (a) **Prohibited Acts.** An employee shall not commit an act of violence or a threat of violence.
- (b) **Requirement to Report.** If an employee becomes aware of an act of violence or a threat of violence, the employee shall immediately report the act or threat to the appointing authority or the appointing authority's designee.
- (c) **Action by Appointing Authority.** An appointing authority or designee who receives a credible report of an act of violence or a threat of violence shall take reasonable actions to protect employees.

2-20.2 Firearms and Explosives

- (a) **Carrying and Possession Prohibited; Exceptions.** An employee shall not carry or possess a firearm or explosive at a state workplace or during actual-duty time, except as authorized below:
 - (1) **Firearm.** An employee may carry or possess a firearm at a state workplace or during actual-duty time only under one of the following circumstances:
 - (A) The employee is (1) employed in a law enforcement, correctional, investigative, security, or military capacity and (2) permitted or required by departmental work rules to carry or possess a firearm at a state workplace or during actual-duty time.
 - (B) The appointing authority has specifically authorized the

employee in writing to carry or possess a firearm at a state workplace or during actual-duty time.

- (C) Except when prohibited by law or a departmental work rule, the employee carries or possesses a firearm inside a personal vehicle while the firearm is completely unloaded and enclosed in a case in the vehicle or carried in the trunk of the vehicle.
- (2) **Explosives.** An employee may carry or possess an explosive at a state workplace or during actual-duty time if the employee is authorized by the appointing authority to carry or possess the explosive as part of the employee's official duties.
- (3) **Requirements.** An employee authorized to carry or possess a firearm or explosive under subsection (a)(1) or (a)(2) must carry or possess the firearm or explosive in a reasonable manner and in compliance with (1) all applicable laws, including the civil service rules and regulations, (2) all departmental work rules, and (3) any instructions or limitations imposed by the appointing authority.
- (b) **Requirement to Report Violations.** An employee who becomes aware that any person possesses or is carrying a firearm or explosive in violation of this rule shall immediately report the matter to the appointing authority or the appointing authority's designee.
- (c) **Action by Appointing Authority.** An appointing authority or designee who receives a credible report of a violation of

this rule shall take reasonable actions to protect the safety of employees.

2-20.3 Effect of Other Laws

This rule regulates the ability of employees to carry or possess firearms and explosives (1) at any state workplace at any time and (2) in any place during actual-duty time. Except as specifically authorized in this rule, a constitutional or statutory provision that otherwise permits a person to carry or possess a firearm or an explosive does not authorize an employee to carry or possess a firearm or explosive during actual-duty time or at a state workplace.

2-20.4 Penalty

If an employee violates this rule, an appointing authority may discipline the employee, up to and including dismissal.

2-20.5 Departmental Work Rules

An appointing authority may issue departmental work rules related to firearms, explosives, and workplace safety that are not inconsistent with this rule.

[Rule 2-20 added effective September 1, 2001]

[End of Chapter 2]